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Class 125

Book 1

[SENATE DOCUMENT.]

THE REPORT

OF THE

COMMISSIONERS ON BOUNDARY LINES,

BETWEEN THE

STATE OF VIRGINIA,

AND THE STATES OF

MARYLAND, NORTH CAROLINA AND TENNESSEE,

Read in the Senate, Jan. 17, 1872.

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William Green, 1873.
PREFACE.

This report and the documents referred to in it, with the letters accompanying the same, were delivered to the Senate on the 17th of January, 1872—and the report now printed was read in secret session. After the letters and the report were read they and the documents were referred to the Committee on the Library, under an injunction of secrecy. On the 14th of February the injunction of secrecy was removed, and the committee was authorized to publish the report, and such of the documents as the Commission might think proper to have printed for the use of the Senate.—See Journal of the Senate 1871-'72, pp. 153, 259, 264.

Under such restrictions the committee refrained from printing any of the papers until the receipt of the following note:

“RICHMOND, VA., Feb. 26, 1872.

“TO ABEL T. JOHNSON, Esq., *Chairman, &c.* :

“DEAR SIR—To prevent all misunderstanding of the wishes of the Commissioners on the Boundary between Virginia and Maryland, I am authorized to say that whilst they do *not* desire that the *papers referred to in this report* of Mr. Dejarnette shall be published, it is the *desire* of the Commissioners that the report itself shall be printed.

“Very respectfully yours,

“HENRY A. WISE.”

Under the authority above named, and after this expression of the wishes of the Commission, the Committee on the Library issue this instalment of the papers, showing the operations of the Commission on the boundary lines between Virginia and the States adjoining her on the north and south. Whenever permission is given to publish any of the documents obtained by Mr. Dejarnette, they will be printed uniformly with this and paged so as to form a continuation of it, and we suggest, therefore, inasmuch as a very small edition is printed, that those who desire to have the whole bound in a volume, will find it advisable to preserve this for that purpose.

*Copy to the Virginia Commissioners, for a
al report, pp. 116-117.*

CORRESPONDENCE.

COMMONWEALTH OF VIRGINIA,

EXECUTIVE CHAMBERS,

Richmond, January 10th, 1872.

To the General Assembly :

I have the honor to transmit herewith the report of the Commissioners appointed by authority of the Joint Resolution, approved June 27th, 1870, and continued under the Act approved February 4th, 1871, to ascertain, and in conjunction with the Commissioners of the State of Maryland, to establish the boundary line between the States of Virginia and Maryland. This report contains a full statement of the labors of the Commissioners, and the results attained, together with their views upon the future action necessary to be taken in the premises, in which I fully concur. Since the date of the report, I have been informed that a joint meeting of the Commissioners of the two States has been agreed upon, to be held during the present month, a report of which, and the conclusions, if any, reached by the Joint Commission, or by our Commissioners, I hope to be able to lay before you during your present session, in time for such action as you may deem proper. I also transmit herewith, sealed, the report of the Special Commissioner, appointed to procure from the English archives such documentary evidence as was deemed by the Commissioners absolutely essential to the maintenance of the claims and rights of Virginia. This report is very full, and discloses information of the highest importance, which it may not be deemed advisable to publish at this time, and I respectfully suggest that it be first read, and the propriety of its publication considered and determined in secret session.

The maps, documents, &c., &c., referred to, are, for greater security, deposited in the vaults of one of our city banks.

Copies of the Joint Resolution, above referred to, were transmitted to the Governors of North Carolina and Tennessee, but no response whatever has ever been received.

Copies of my letters of transmissal are herewith enclosed. I have recently caused copies of the Act of February 4th, 1871, to be transmitted to the Governors of said States, in the hope of eliciting favorable action from the present Executives and Legislatures of those States.

G. C. WALKER.

COMMONWEALTH OF VIRGINIA,

EXECUTIVE CHAMBERS,

Richmond, December 2. 1870.

His Excellency W. W. HOLDEN,

Governor of North Carolina, Raleigh:

SIR—I have the honor to invite the attention of your Excellency to the enclosed copy of a Joint Resolution of the Legislature of Virginia, proposing a plan for ascertaining and determining the true boundary line between the States of North Carolina and Virginia, and to request your concurrence and co-operation in the object designed to be accomplished by it.

It is true that the very friendly relations that have always existed between the people of these States, and the courtesy, forbearance, and justice that have characterized their intercourse and dealings, have made the exact and legal definition of the line of jurisdiction that divides them a matter of less consequence than under other circumstances it would have been, but reasons nevertheless, will readily occur to your Excellency of sufficient moment to bring your mind to the conclusion that this long neglected duty should be no longer deferred.

Counting confidently on your approval of the proposition of the Virginia Legislature, and requesting to be informed of any action taken by yourself, or the Legislature of your State in furtherance of the same, I am

Very respectfully,

Your obd't serv't,

(Signed,)

G. C. WALKER,

*Governor of Va.**No response. See ante 4.*

COMMONWEALTH OF VIRGINIA,

EXECUTIVE CHAMBERS,

Richmond, December 2, 1870.

His Excellency DE WITT C. SENTER,

Governor of Tennessee, Nashville :

SIR—I have the honor of inviting your Excellency's attention to a Joint Resolution, adopted by the General Assembly of Virginia, approved June 27th, 1870, (a copy of which is herewith enclosed,) proposing the appointment of Commissioners, with a competent corps of surveyors, to ascertain and locate the true boundary lines between the State of Virginia and the States of Maryland, North Carolina and Tennessee.

The cordial unity always existing between the good people of Tennessee and of Virginia, and the courtesy and high sense of justice that have characterized the intercourse between the authorities of the two Commonwealths, respectively, render the precise and legal definition of the boundaries of jurisdiction to each belonging, less important than it would be under less pleasant relations.

Still there are reasons, doubtless obvious to your Excellency, for early attention to this important matter; and I therefore solicit your concurrence and co-operation in the action of the General Assembly of Virginia, and request to be informed of any action which may be taken by yourself, or the Legislature of your State, in furtherance thereof.

With sentiments of great respect, I have the honor to be,

Very truly,

Your obd't serv't,

(Signed,)

G. C. WALKER,

Governor of Va.

No response. See ans 4.

RICHMOND, VA., *December 1st, 1871.*

To his Excellency, GILBERT C. WALKER,

Governor of Virginia :

SIR—In pursuance of your appointment of the undersigned as Commissioners on the part of this State, to meet and confer with Commissioners on the part of the State of Maryland, to settle and adjust the boundaries determinous to the two States, they have promptly and diligently proceeded to the discharge of their duties, and now submit a partial report.

After ascertaining the names and residences of the gentlemen appointed on the part of Maryland, the Hon. Isaac D. Jones, William J. Aydelotte, and Levin L. Waters, Esquires ; the first residing in the city of Baltimore, and the other two on the eastern shore of Maryland, the undersigned met and conferred as to the best time and place of holding a meeting of the Joint-Commission. At once they found that they were not prepared for a Joint-Conference. The very valuable and indispensable report last made by the previous Commissioner, Angus W. McDonald, Esq., could not be found, and of the nine volumes of manuscript vouchers of his report, consisting of archives procured in England at considerable cost and trouble, but four remained, and they are much mutilated ; and all his copies of maps were missing. The leaves have been cut out, and in such a manner as to show evident design of destroying important evidence upon the question of boundary. The undersigned could not prudently proceed without that evidence. If they met the Maryland Commissioners, they would be without the vouchers of title ; and the absence of proof would probably tend to cause a disagreement. If there should be an agreement, a permanent line would have to be run ; and, if not, experimental lines, one or more, would be required to show the exact difference between the conflicting claims ; and to run any line would have necessarily to be postponed until the season of spring.

In this state of the case, the undersigned requested your Excellency to ask for an appropriation to send a messenger to England, with a view to supply the lost files of the McDonald report, which was
*where letter of 31 Dec. 1870, in "file" =
 vol. 45-46.*

granted ; and Mr. Dejarnette was sent, under instructions of which you are fully informed.

In the meantime the other two Commissioners have been assiduously employed in obtaining materials for the Commission, at home. They have succeeded in finding newly developed and important information from the records of counties, from the land office, from private papers and from a close examination of the ancient statutes, and the best histories of the State.

By the time Mr. Dejarnette returned from England, much material was procured here. He was detained longer than he expected, but returned in good time for a meeting of the Joint-Commission in the fall, and his report is before you. It shows that his mission was not in vain, and that whilst he was not allowed to replace all the papers lost in the McDonald report, yet he obtained many of them, and some of great importance, which the McDonald report did not embrace.

Two of the undersigned, being from the upper country, preferred not to go upon the work before frost set in ; and accordingly, after the return of Mr. Dejarnette, proposed to meet the Commissioners of Maryland in the month of October last. Unfortunately but one of them was able to make an appointment in the early part of that month, and the other two could not, owing to their engagements, make an appointment earlier than some time in November. But, for special reasons, the undersigned determined to assemble at Crisfield, on the eastern shore of Maryland, where two of the Commissioners reside, in the month of October, and they gave notice thereof to Messrs. Jones, Waters and Aydelotte. The latter alone met the undersigned at the time and place appointed.

This visit to Crisfield was important and not fruitless. Valuable statistics and local information were obtained, showing the importance of the boundary line on the eastern shore of the Chesapeake, and the localities of two monuments were found and identified, not only west of the Pocomoke river, but west of Watkins' Point, at Smith's Island, on the Chesapeake Bay and Tangier Sound.

Two of these monuments were visited by one Commissioner from Maryland, and one from Virginia, and the locality of another ascertained. Directions were given to have all three marked for the future.

All that the undersigned could do, then, was to confer upon a report, and to await any further action on the part of the Commissioners of Maryland. Since, these Commissioners have requested a meeting of the Joint-Commission at Baltimore, in December, but at so early a day that the Virginia Commissioners could not be notified in time, and a further correspondence as to an appointment is now pending. But it is proper to observe, that, though the Joint-Commission may meet and confer, they cannot do any field work, or run any line experimental, or permanent, before as late as the month of May next. Several causes prevent the running of a line during either the winter or summer months. The line passes over large sheets of water on the bay and sea coasts, and requires calm and clear weather in which to run it—and it passes also over large bodies of both salt marsh and fresh water swamps, most accessible in the spring or fall, when they are free of mosquitoes and frondage, and when working parties may penetrate them with least danger to health, and can accomplish their work with most exactness and dispatch.

Two lines are essential to be run—first, the exact parallel of 38° N latitude; and second, the line run by Scarborough and Calvert, A. D. 1668, on which are numerous monuments. Accompanying this report is a copy of a letter from Mr. Cutts, Ass't Supt. of the Coast Survey, showing the probable expenses.

The whole, or nearly all of the appropriation made by the last General Assembly, (\$5,000,) has been expended by the necessary drafts made upon it by the Commissioners during the year.

The mission to England cost one-half of that amount. And the advances required, individually, by the Commissioners have consumed the balance. The undersigned cannot but urge the great importance of this settlement of boundary between Maryland and Virginia—embracing as it does riparian rights for the whole length of the Potomac river, and the oyster fisheries for a large portion of the Chesapeake Bay, included in the Tangier and Pocomoke Sounds, and their estuaries, creeks and bays; and liberal appropriations should be made to obtain the best researches and information, the most exact surveys, and the most durable monuments.

Appropriation for the expense of permanent monuments may well be postponed until a settlement is agreed upon by the Joint-Commis-

mission, and approved by the respective Legislatures of the two States; but Virginia should not neglect her interests in preserving whatever ancient marks and monuments remain, until a settlement is obtained. The estimate of Mr. Cutts is for surveys and monuments only. Other expenses will require as much more, say in all \$10,000.

The undersigned confine themselves, for the present, to this partial report—not entering, for obvious reasons, upon the question of the true line. They concur in their views, and are confident in their convictions upon the question; and have in their possession and in their reach such materials and data as will assuredly fortify the title of Virginia to her ancient bounds, but they submit that it is not now prudent to present the history and the proofs of that title or its location.

All which is respectfully reported for your consideration, and that of the General Assembly.

HENRY A. WISE,
D. C. DEJARNETTE,
WM. WATTS,

Commissioners.

The foregoing, dated "December 10, 1871," is also printed in the "first report," pp. 110-113.

WASHINGTON CITY, D. C.,

December 13, 1871. C. J.

Hon. H. A. WISE, &c. :

DEAR SIR—Your prompt reply to my enquiry of 8th, was duly received, for which accept my thanks. The charts of the Chesapeake Bay will be forwarded by next mail. Please return the report made by the Maryland Commissioner in 1860, which you now have, and I will send such additional copies as I may be able to obtain. There are none at the Coast Survey office. The report of Col. McDonald is herewith returned.

The accompanying estimate is based on the supposition that the maps of Lieut. Michler, seventeen in number, can be made available as part of the record, but to what extent, must depend upon the action and decision of the Commission.

It is believed, however, that the sum named will be sufficient for every possible contingency. The whole amount appropriated by Maryland for the last Commission, was about \$16,000. How much by Virginia, I do not know. It should be added, however, that a part of this appropriation was devoted to the surveys, and the marking of the western boundary of Maryland.

The Coast Survey will pay the salaries of the surveyors, provide the instruments, &c., and also the tents, &c., should any be required.

I am, very respectfully,

Your obd't serv't,

RICH'D D. CUTTS.

ESTIMATE.

Estimate of the expenses to be incurred in surveys, preparatory to the final establishment of the boundary line between Virginia and Maryland, on the Eastern Shore of the Chesapeake Bay—in opening such portions of the line as the survey and marking may require; in the purchase and erection of suitable monuments; and in drawing such additional maps, including a descriptive memoir of the position of each monument, as may be deemed necessary for the future security and identification of the line, \$5,000.

with so printed in the "final report", pp. 106-107.

RICHMOND, November 18th, 1871.

To his Excellency G. C. WALKER,

Governor of Virginia: 60

SIR—Under an Act passed by the General Assembly of this State, on the 4th of February, 1871, authorizing and requesting the Governor, if he should deem it expedient, to send to England an agent, charged with the duty of restoring the mutilated records obtained thence, by Angus McDonald, in 1860, and all other records, and documentary evidence, tending to ascertain and establish the true lines of boundary between Virginia and the States of North Carolina, Tennessee and Maryland, your Excellency was pleased, on the recommendation of my associates on the boundary commission, (General Henry A. Wise and Col. William Watts,) to commission me as such agent, and by your instructions of March 30th, 1871, to indicate the service I was expected to perform.

I beg leave now to report to your Excellency the result of my mission.

To expedite the removal of the rigid forms, by which access to British archives is guarded, and (which so much embarrassed my predecessor, Mr. McDonald,) I obtained from the Secretary of State of the United States, the sanction of the official seal of the Government, and also that of the British Legation at Washington, and was also favored by Sir Edward Thornton, Her Majesty's Minister, resident at Washington, with a letter to Mr. Hammond, the Under Secretary of State at London.

I sailed from New York on the 15th of April, and landed in Liverpool the 28th of the same month, and, by rail, reached London the same day.

I called at the American Embassy the following day, and from Mr. Moran, in charge of the Legation, received the assurance of his official support, and the promise of an early interview with Mr. Hammond.

Accordingly, a few days thereafter, I was presented to Mr. Hammond, and received from him authority to enter the British Museum as a reader, with the privilege of taking copies of any books I desired, and also of taking for my assistants such clerks as I might deem necessary.

But when I asked permission to examine the Rolls Office and State Paper Office, with the same privilege of taking copies, it was refused.

The reasons for refusal, as alleged, were, that those departments contained all of the official papers of the Government; that those papers were not arranged under the heads of the several Colonies, but were mixed promiscuously with those of the British Government, and were arranged only as to dates; and, also, because the State Paper

60 & c c and 1.3, 7-8.

Office had been discontinued, by order, in 1863, and all of the papers transferred to the Rolls Office, and were not yet arranged even as to dates.

The difficulties which my predecessor, Mr. McDonald, had previously encountered, prepared me to expect a refusal. From Mr. Hammond, however, I obtained a promise of an early interview with Lord Granville, Secretary of State, with the assurance that the rules should be as much relaxed, in my behalf, as was consistent with the requirements of British laws.

It was not then till the 11th of May, that I received from Lord Granville the authority asked for, and even then, was prohibited from examining records of later date than the reign of Queen Anne.

1606 being the date of the first charter of the Colony of Virginia, I commenced my investigations with the records of that date. For ready references, I have arranged in chapters the documents, as they were found and copied; corresponding to the numbers, as they occur in the index, herewith transmitted.

Chapter 1st contains the original grant to Sir Thomas Gates, Sir George Summers and others, of Virginia, between 34 and 35 degrees, dated April 10th, 1606.

Chapter 2d contains the amended charter of Virginia, granted to Robert, Earl of Salisbury and others, the recapitulations of whose names occupies 28 pages, dated May 23d, 1609.

Chapter 3d contains extract of the grant to Earl of Salisbury and others, confirming all their former privileges, &c., dated March 12th, 1612.

Chapter 7th contains an order of the Privy Council, in regard to the new charter of Virginia, dated October 8th, 1623.

Chapter No. 8, reply of the Virginia Company to the King, October 15th, 1623.

Chapter No. 9, proposals of Virginia Company to surrender their charter, October 20th, 1623.

Chapter No. 11, the King to Sir John Harvey, Governor of Virginia, renewing their grants to lands, and privileges formerly granted, and declares his pleasure in sundry other things touching the Government there, September 12, 1628.

Chapter 12th, memorial of Lord Baltimore to Secretary Dorchester, prays for a grant of a portion of land in Virginia—the King having given him leave to choose a part, December, 1628.

Chapter No. 13, Lord Baltimore to the King, protestations of services &c., desires a grant of a precinct of land in Virginia, to which he wishes to remove with some forty persons, with such privileges as King James granted to him in Newfoundland, dated August 19, 1629.

Chapter No. 14, the King to Lord Baltimore, in answer to the above, dated November 22d, 1629.

Chapter 15th, Governor Pott and others to the Council, respecting Lord Baltimore's arrival in Virginia, and his desire to remain there.

Being of the Romish Church, refuses to take the oath of supremacy, November 30th, 1629.

Chapter 16, petition of Edwin Rosingham to the Council. The King takes the government of Virginia in his own hands, July 11th, 1629, &c.

Chapter 17th, articles of agreement between Lord Berkely and William Boswell and others, for the settlement of Carolina, in 34, 35 and 36 degrees north latitude, dated May 15, 1630.

Chapter 20th, patent to Cecil, (Lord Baltimore,) containing a grant of province of Maryland, communicated to Mr. Beak from Lord Baltimore, dated June 20th, 1632. This purports to be the *original*, found in the Rolls Office, enrolled on parchment, and engrossed in the Latin language. This copy was taken by the keeper of the Rolls, and bears his official seal. To verify this (a most important paper.) I employed Thomas Edlyne Tomlins, (attorney at law, and record solicitor of Lincoln's Inn Fields, London,) to copy and translate so much of this Latin charter, found in the Rolls Office, as describes the bounds of the territory thereby granted. This copy, also, will be found under the head of this chapter.

Chapter 21st, another copy of the same patent, certified by Henry Brooke, clerk of the Rolls Chapel. "This and the preceding charter differ in this respect, that in the present copy the contracted words are not extended in the preceding copy—they have been written in extenso, from the original, *in possession of Lord Baltimore.*"

Chapter 22d, another copy, (*printed*,) taken from a volume, entitled a "Relation of Maryland."

Chapter 23d, another copy, taken from a printed volume, entitled The Acts of Assembly, printed by John Basket.

Chapter 24th, still another copy, taken from a printed volume, called the Laws of Maryland.

Chapter 25th, consideration of objections to Lord Baltimore's patent, in matters of law, inconvenience and equity, &c., in which the King places Watkins' Point on the 38th parallel, dated June, 1632.

Chapter 26th, order of Privy Council, upon a petition of the planters in Virginia, remonstrating against certain grants of a large portion of lands within that Colony, and their differences with Lord Baltimore, dated July 3d, 1633.

I do not deem it necessary in this synopsis, to invite your Excellency's attention to the contents of the 144 chapters referred to, by the index appended to the documents, obtained by me from the British archives.

I *have* deemed it necessary, thus far, to invite your Excellency's attention to those referred to, (with few omissions) in their regular succession, in order that at a glance you might discover the relative rights of the two Colonies, at the date of the controversy.

I was fortunate to reproduce all of the important papers directly relating to the boundary between Virginia and Maryland, obtained by

my predecessor, Mr. McDonald, and by the light of his labors and researches, was put on the trace of others, which I was so fortunate as to obtain, thus enabling Virginia to remove the last doubt, if any remained, as to Virginia's right to all she claims.

Inasmuch as the conclusions arrived at by McDonald, sustained by the records procured by him from the British archives, and delivered by Governor Letcher, together with Mr. McDonald's report, dated 2d February, 1861, to the Legislature of Virginia, are deemed conclusive. I have only to assure your Excellency, that those documents reproduced will be found with those I have the honor herewith to transmit.

I will add in this connection, that those papers enable us to locate Watkin's Point, (the pivotal point,) on which this boundary controversy on the eastern shore, turns on the thirty-eighth parallel, by the authority of the grantor, (Charles I.) who locates it there himself.

To locate the true and proper line of boundary from Watkins' Point to the Pocomoke, a distance of 14.98 miles, is to solve the boundary on the eastern shore, since the line from the Pocomoke to the sea is well defined by the ancient marks and monuments established by Scarborough and Calvert, in 1668.

In this view of the case, I am not embarrassed by the compact of 1785, as that compact only relates to the joint use of the Potomac and Bay, and not to the territorial limits. For it is certain that neither the Legislature of Virginia nor of Maryland, conferred upon the Commissioners the right to adjust territorial bounds.

Entertaining this view and fully appreciating the difficulties attending a satisfactory adjustment of a controversy, existing nearly two and a half centuries, I could entertain no hope of success, without appealing to the muniments of titles, on which each State relied, and by which alone this controversy can be adjusted. They existed mostly in England, and had to be dug from a mountain of colonial records with care and labor.

I have referred your Excellency to the first charter granted by James I., dated 10th April, 1606, to the London Company for Virginia, embracing all the country between 34 and 45 degrees N. latitude. Then to the amended charters dated 23d May, 1609, and also to another amendment of the same charter, of date 12th March, 1616. In neither of these amendments are the territorial limits of Virginia, as embraced in the first charter altered, except as to the islands. The territory embraced in Lord Baltimore's charter for Maryland, dated 20th June, 1632, was carved (in the exercise of a royal prerogative,) from the territory embraced in the boundary calls of the Colony of Virginia.

With this stipulation from Charles I. (*herewith transmitted*), that he was prohibited from embracing any part of Virginia in his limits inhabited by others than Indians.

In this connection, I invite your Excellency's attention to chapter 49, which is a report of commissioners of plantations, showing that not only the Virginia Colony had settled the country north of the Po-

tomaek, but at the date of Lord Baltimore's charter, a member of the House of Burgesses lived north of that river.

I refer to this, not to assail the validity of Lord Baltimore's grant, but to show the origin of this controversy, which has been from that time to the present, existing in regard to this boundary.

Chapter 26th contains an order of the Privy Council, on the petition of the planters in Virginia, remonstrating against certain grants of a large portion of lands within that Colony, and their differences with Lord Baltimore, dated 23d July, 1633.

Then follows a letter from Charles I. to Lord Baltimore, charging him with having deceived him, in representing that he embraced in his boundary calls, no country occupied by the Virginia settlers. This is not so, says the King—for in truth a part was already occupied by the Virginia Colonists.

Lord Baltimore's charter embraces also the State of Delaware—but Charles II., when it was shown him, that at the date of Lord Baltimore's charter, that that territory was occupied by the Dutch, and informed Lord Baltimore that it did not pass to him, though embraced in his boundary calls, because it was at the date of his charter, *occupied by others than Indians and the King*—accordingly sold it to Wm. Penn.

/// Charles I., secretly a Roman Catholic, controlled in a great degree
 “ by Lord Baltimore and his brother-in-law, (Peasley, who was Secretary to the King,) was made to believe by those two zealous Catholics,

In Chapter 56, (with its inclosures,) will be found a petition; and that they could establish the Roman Church in the Colonies, and thus Lord Baltimore was allowed to hold that part of Virginia.

amongst other matters prayed for, is a grant of land, between the rivers Potomac and Rappahannock, “by reasons of a Royal promise formerly made the Virginia Company”—date, July 28th, 1639.

Mr. McDonald, in his report, to which I have referred, thus alludes to this grant. The grant of Northern Neck, by Charles II., to Ralph, Lord Hopton, Henry, Earl of St. Albans, Lord Culpeper and others, in the first year of that King's reign, included the rivers Potomac and Rappahannock, and all the islands within their banks.

“This grant,” says Mr. McDonald, “will be found *referred to* in the first vol., Revised Code, page 43, chapter 89; it is also referred to in a letter from Charles II., of date March 30th, 1663—copied in volume 4th, page 261, and therein mentioned as having been made in the first year of the King's reign; the commencement of which he was accustomed to date from the date of his father's death on the scaffold.”

In this letter he describes said grant as embracing all the land lying between the rivers Potomac and Rappahannock, and the Chesapeake Bay, together with the rivers themselves, and all the islands within their banks.

This grant and all its amendments and its transfer to Va., I

was so fortunate as to find, and beg leave to invite your Excellency's careful attention to what follows :

That Virginia should have erected forts, established ports of entry, created ferries, and to this day appoints Pilots on the Potomac river, without exciting remonstrance from the Legislature of Maryland, furnish the strongest presumption, that she had abandoned all claim to any portion of that river, and can be explained only by the light thrown on this subject by the Fairfax grant, which places that river wholly within the limits of Virginia. Thus the mystery of Maryland's acquiescence is explained.

CHAPTER 80TH

Contains a copy of an original letter from King Charles II., to the Governor and Council of Virginia, commanding them to give every encouragement to the planters and settlers, &c., *with enclosure* ; and also a petition of Henry, Earl of St. Albans, John Lord Berkely, Sir Wm. Moncton, and John Fethurg, Sir Cobden, assignees of the late Lord Hopton, to the King, in 1649 ; the King granted, by letters patent to them, all that territory bounded by the rivers Potomac and Rappahannock, the courses of those rivers to Chesapeake bay. After the restoration, their agent, Sir Humphrey Hook, was molested by the Governor of Virginia, which fact being brought before the King in Council, they, Lords Culpeper, Fairfax and others, surrendered some of their privileges, and on the 8th of May, 1665, a new patent, with the consent of Mr. Morrison, the Governor's agent, was granted to them, dated April, 1665.

Chapter 86th contains a copy of an original grant of charter by Charles II., to Henry, Earl of St. Albans, and others, together with a copy of amended grant, dated May 8th, 1667, at Westminster. The original is here said to have been granted under the Great Seal at St. Germain's, December 8th, 1651 : it embraces the rivers Potomac and Rappahannock, and the land between those rivers, and the islands within their banks.

The terms of the grant require that it should be held under the jurisdiction of the Colony of Virginia, dated 8th of May, 1667. It was by virtue of this grant, that to Virginia was restored the jurisdiction of the Potomac, which was exercised by the Assembly, on the 23d of September, the same year, 1667. Chapter 89 contains Acts of Assembly at James City, establishing forts on the James, York, Potomac and Rappahannock rivers. 23d of September, 1667.

Chapter 92. Petition to the King, for permission to buy Lord Culpeper's grant, and remonstrating against similar grants for the future. Dated Feb. 28th, 1674.

Chapter 93. Copy of the report of the Attorney and Solicitor General in the report of the case of a charter for Virginia &c. Dated October 4th, 1675.

CHAPTER 94.

Order of Council upon a report touching a grant to be passed to his Majesty's subjects, in Virginia. Dated November 19th, 1675.

CHAPTER 136.

Copy of an Act appointing ports, &c., for preventing frauds upon the customs in Virginia. Under this Act ports were established on the Potomac. December 7th, 1685.

By this evidence the last doubt is removed, as regards the Northern boundary of Virginia.

The last grant of that section was to the Earl of St. Albans, Lord Culpeper, Lord Fairfax and others, calling, not only for the Potomac river as their boundary, but in express words, embracing that river and the islands within its banks.

This grant was acquired by Virginia, and by order of Council, restored to her the 9th of November, 1675. But from the date of the grant, May, 1667, to Lords Culpeper, Fairfax and others, (her citizens) she, Virginia, claimed and exercised undisputed control of the river Potomac.

Her first Act exercising jurisdiction, was dated 23d September, 1667, in erecting forts on the Potomac. It was not until October, 1673, that the attention of the Colonial Legislature was directed to the subject of establishing ferries, and the first and only steps then taken, were to provide for the appointment of Commissioners, to fix upon suitable points at which to establish free ferries, who were to report to the next Assembly. 2d Hen., S. at L., page 310.

But no ferries were established until 1702, when many were established on the James, York and Rappahannock, and one on the Potomac: "From Col. Wm. Fitzhugh's Landing, in Potomac river, over to Maryland."

It will be borne in mind, that up to the ratification of the compact of 1785, as many as twenty-eight ferries were established by Acts of the Legislature of Virginia, over the Potomac to Maryland.

When, may I inquire, in view of this history, did Virginia lose the limits of the Fairfax grant? Not by the compact of 1785, because that compact had no reference to territorial bounds.

The Fairfax stone, situated at the head springs of the North Branch of the Potomac river, is admitted by Maryland to be the Southern extremity of her Western line, and also the Western extremity of her Southern line. It, in fact, is her Southwestern corner, and from that punctual spot, her line follows the North Bank of the Potomac river to the Bay, and thence to Watkins' Point.

Does Maryland recognize the Fairfax stone as the corner established by the boundary calls of her original charter? Certainly not, as is indisputably shown by the history of that stone.

Let me refer your Excellency to Lord Baltimore's answers to ques-

tions propounded by the Lords, Commissioners, &c., dated 10th April, 1676.

In chapter 96th will be found those questions, and Lord Baltimore's answers. In answering the tenth question, Lord Baltimore says: "the boundaries, longitudes and latitudes of the Province of Maryland are well described and set forth in the chart or map of this province, lately made and prepared by one Augustine Herman, an inhabitant of said province, and printed and publicly sold in London by his Majesty's license, to which I humbly refer for greater certainty, &c." "For this map," says Mr. McDonald, "I made myself and caused others to make, great search, in every known depository in London, but could find no map authenticated as Herman's."

This map I found, not in the map department of the British Museum, where all maps are supposed to be deposited, but in the Greenville Library, created and sustained by donations of private libraries, and a depository of the papers of extinct families.

By permission of one of the Trustees of this Institution, I was kindly permitted to examine the books, but *not* the papers, deposited there. This map I had photo-lithographed, and is marked A. in the maps herewith transmitted. It dots Lord Baltimore's Southwestern boundary on the south bank of the Potomac to Acquia Creek, and thence up said creek along its southern bank as far as said creek is shown on said map. It places Watkins' Point also on 38th parallel.

This map was made by Augustine Herman, a personal friend and dependent of Lord Baltimore's, who lived at the line in Maryland, and at whose house Lord Baltimore spent most of his time while in the Colony; and he was present with Lord Baltimore and Wm. Penn at their first Conference about the grant and boundary of Delaware and Pennsylvania coterminous with Maryland, as is shown by the accompanying papers herewith filed marked X. It bears Lord Baltimore's coat of arms, and is the matrix from which has sprung all the difficulties in adjusting the territorial limits of the two States.

In Ogilby's America, will be found an exact copy of this map of Herman's, and all authors whose maps show the Southern line of Maryland dotted on the South bank of the Potomac, were misled by Ogilby, who copied without alteration from Herman.

This map, in the language of Lord Baltimore, well describes and sets forth the boundaries, latitudes and longitudes of his province. Does Herman, in running this Western line of Maryland in its course South, stop at the Fairfax stone? certainly not: but passes over that spot fifty miles directly South, to what was *supposed* to be the Potomac, but really the head of Acquia Creek.

By what authority, then, was this line established, by Lord Baltimore, through his agent, Augustine Herman, altered? As he claimed that that map embraced, only what was called for, by his original charter.

It could have been done only by Royal authority, which was exercised by Charles II., when in exile.

Among his first official acts, he restored to Virginia her rightful

bounds, of which she had been deprived by his father, to promote the interest of the Catholic Church, which it was known he secretly favored. To give full force and effect to this grant, soon after his restoration he confirmed it, and describes the territory thereby granted, "as being all that country lying between the rivers Potomac and Rappahannock, together with the rivers themselves, and the islands within their banks."

It was then by authority of this grant, that Maryland was forced to agree to the establishing of the Fairfax stone, located in 1745, as her limit South, on her Western line. The name of this stone, then, reveals its history; and Maryland, by recognizing it, admits the validity of the Fairfax grant.

From this stone then, to the Chesapeake, there is no escape for her from following the calls of the Fairfax grant, which gives the Potomac river and the islands within its banks to Virginia.

This conclusion is justified and rendered irresistible by the maps B., C. and D., obtained from the British Museum, and herewith transmitted.

These maps dot the Northern line of Virginia, on the North bank of the Potomac, from the Fairfax stone, to where it empties into the Chesapeake Bay, at Point Lookout. We are then at Point Lookout by virtue of that authority, which commanded obedience from Maryland, and from which there is no escape.

On the Eastern shore we are placed at Watkins' Point, on the 38th parallel by Charles I.; on the Western shore of the Chesapeake, we are placed by Charles II., as I have shown, by authorities, not to be controverted at Point Lookout. The closing line, therefore, can be easily run between these two points.

Mr. McDonald, after his return from England, arrived at the same point sustained by the records, which he obtained there, with great labor. He shows that the claim of Maryland to the South bank of the Potomac, sprung from a mistranslation of her original charter.

Let me again invite your Excellency's attention to the admirable report of Mr. McDonald.

Mr. McDonald, in referring to the discrepancies between the different copies of the original charter, given Lord Baltimore, says: "It will be seen, by comparing the two, that the Latin text as given by Bacon, is a plain and gross departure from the original, as found recorded both in the Rolls Office and the State Paper Office.

"And but for the gross and patent violations of both the letter and spirit of the original grant, no reasonable doubt would ever have existed—that the whole Potomac river, from its source, (wherever fixed and whenever ascertained,) to its mouth, was wholly without the limits of Maryland, and within the limits of Virginia."

He says: "I have caused to be translated, by Thomas Edlyn Tomlins, attorney at law and record solicitor, of Lincoln's Inn Field, London, so much of the Latin charter as the same is found recorded in the Rolls Office, as describes the bounds of the territory thereby granted; which translation cannot be so interpreted as to permit the Maryland

boundary along the banks of the river Potomac to be on the Virginia shore—and more, it establishes, beyond all plausible cavil, Point Lookout as the point from which the closing line of the descriptive calls, is to be drawn over the bay to the headland, called in the charter, Watkins' Point, and mentioned as the beginning point on the Eastern Shore."

The evidence on which Mr. McDonald based his conclusions, as well as that which sustains me in the conviction that Point Lookout is the extreme southern point on the Chesapeake, to which Maryland can justly claim on the western shore, I have the honor to submit to your Excellency, together with this report.

In the British Museum I found a book styled, "A Relation of Maryland," which throws much light on this controversy; and also another, in the Greenville Library, styled, "Lord Baltimore's case, &c." See chapter 143. These books purport to have been written by an inhabitant of Maryland. These I had copied, and they will prove to be of interest and value, and will be found under the heads indicated in the index.

By your instructions, I was likewise directed to obtain such evidence as the British archives contained, relating to the boundary between Virginia and North Carolina, and Virginia and Tennessee.

In this regard, I invite your Excellency's attention to chapter 78, which is the charter of the Earl of Clarendon and others, for Carolina, dated March 14th, 1663.

In chapter 82 will be found the amended charter to the Earl Clarendon, enlarging the terms of his former patent, dated June 30th, 1665.

I also obtained maps which correspond to the boundary calls of the charter, which will remove all difficulties, should any occur, in adjusting the boundary of Virginia with those States.

There are many chapters and maps embraced in this report not referred to, because it has already grown far beyond its intended limits; they cannot fail to interest the reader, by revealing the history of this controversy.

The maps are the *fac similies* of the originals, photo-lithographed, the most expensive, but only mode by which *fac similies* can be produced. The usual process is by tracing on linen, when it is impossible for inaccuracies, not to occur. From those obtained by me, all doubt is removed as to the fidelity of the copy.

Under the regulations of the British Museum, two maps copied from each original, are to be given to the Map Department of that Institution. This was accordingly done by me.

By this process of photo-lithography, when the impression is transferred to stone, copies are reproduced at very slight expense. I therefore brought with me six copies of each of the maps obtained from the Map Department of the British Museum, all of which accompany this report.

From the Museum there was comparatively little labor in obtaining such copies as I desired. There books and maps are alone kept, and by admirable system, made accessible. Not so, however, in the

Rolls Office—here nothing is kept but records, enrolled on parchment or loose papers.

The Colonial papers are not arranged under the heads of their respective Colonies, but thrown promiscuously together; and as reports were required to be made of all occurrences in each of the many Colonies of England, they constitute an immense mass of ill-kept and badly written records. These I had to examine and extract such as related to the subject in hand.

I, of course, had to employ many assistants to aid me in discovering the Maryland and Virginia papers, all of which, when found, I had personally to inspect, to see what relation they sustained to this boundary controversy.

My progress was tediously slow; it, not unfrequently being the case, that my labor, together with six or eight clerks for days at a time, was rewarded with not a single paper of importance.

At other times a single package of papers would give me employment for days, when I would have to dismiss my examining clerks, (*whose charges were from two to four shillings per hour.*) To reassemble these clerks and report the occurrence, was my employment for sixty-one days in the Rolls office.

Your Excellency will find that all the papers that are herewith submitted, are attested by an official of the Rolls Office, as being true copies of the originals.

The amount drawn by me from the Treasurer of the State, on your order, on the recommendation of my associates to meet the expenses of the mission, was two thousand five hundred dollars. The premium paid for gold, thirteen per cent., and eleven per cent. for exchange on London, (which I paid in New York,) reduced the amount to one thousand nine hundred and forty dollars, current funds in London.

The amount expended by me, traveling expenses, board, &c., &c., including cost of documents and maps, was \$1,908, leaving unexpended in my hands, thirty-two dollars, which, since my arrival, has been reduced, by \$2.25 express freight on two maps, not completed when I left London, and to be further reduced by the same sum, as two other maps are yet to be received.

The amount, then, unexpended, is \$27.50, which would have been greatly increased but for my being in London during what is known as "The Season," when the city is always *full*, and filled then beyond its capacity to accommodate, by the Civil War, then raging in France. The prices for accommodations at hotels, &c., were increased to two and three hundred per cent. above the usual rates for the season, which are always greatly advanced above those of the ordinary periods of the year.

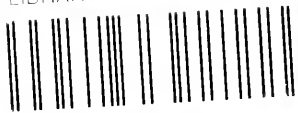
All of which is most respectfully submitted to your Excellency, by yours respectfully,

D. C. DEJARNETTE.

P. S.—The seventy-four maps not called for in the index, accompany this report.

D. C. DEJ.

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